HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPMS No. 7463 (MS) of 2001
Smt. Sahibun Begum,

Vs.

State of U.P.

Approved for reporting.

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Not approved for reporting

Date of decision 25.7.2006

Initial of Judge

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 7463 (MS) OF 2001

(OLD NO. 1888 OF 1998)

Smt. Sahibun Begum,
Aged about 39 years,
W/o Sheikh Mohammad Qurar,
R/o Popular's Compound,
Mallital, District-Nainital. .....Petitioner.

Versus

1. State of Uttar Pradesh, through its Secretary, Nagar Vikas Civil Secretariat, Lucknow.
2. Commissioner, Kunaon Division, Nainital.
3. Nainital Lake Zone, Special Area Development Authority, Waverly Compound, Mallital, Nainital.

.....Respondents.

Dated: 25.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Tanveer Alam Khan, Advocate for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 07.01.1997 passed by the respondent no. 3, order dated 20.03.1997 passed by the respondent no. 2 and the order dated 08.08.1997 passed by the opposite party no. 1.

Briefly stated, a notice was issued by the respondent no. 3 U/s 25 (3) and 26 (1) of the Special Area Development

Authorities Act stating therein that the petitioner has put a tin shed and has constructed a wall. The notice shows as under:-

''एतद्द्वारा प्राधिकरण के संज्ञान में यह तथ्य प्रकाश में आया है कि आपके द्वारा पौपुलर्स कम्पाउण्ड में प्लाट संख्या – 16 के अर्ध भाग में 18X46 फीट क्षेत्रफल में टीन शैड एवं ज्वांइंट वाल पर 46' x6'x4 ½'' दीवार का निर्माण किया गया है।

उक्त क्षेत्र असुरक्षित क्षेत्र के अन्तर्गत आता है।''

Petitioner in his reply to the aforesaid notice has submitted that the tin shed is in existence since long and the Nagar Palika has also assessed the building and the tin shed was already in existence at that time.

The Secretary Development Authority has passed the order for demolition of the constructions on 07.01.1997. The petitioner went in appeal before the appellate Court. The appeal was registered as Appeal No. 30 of 1996-97 Smt. Sahibun Begum Vs. Lake Area Special Development Authority Nainital.

The petitioner has submitted that her house consists of two parts; (a) consists of three storied plan which has already been sanctioned and; (b) there is a house of T. Rehman and it is a three storied house, which is an old construction of more than 12 years.

The said appeal was dismissed on 20.03.1997 and the petitioner went in Revision being Revision No. 68 of 1997 against the State before the Revisional Court. It was also brought to the notice that the double storied house has already been sanctioned and the plan has been submitted on 04.03.1980.

A perusal of the record shows that the petitioner has put a tin shed, which is only a temporary structure.

Section (2) (c) and (d) of the Special Area Development Authorities Act is quoted below:-

"(c) "building" includes any structure or part of a structure with whatever material constructed which is used or intended to be used as a place for the human dwelling or custody of property or performance of worship or for carrying on any occupation trade or business;

(d) "development" with its grammatical variations means, the planned development of any area by carrying out building, engineering, mining or other operations in, on, over or under land, or making any material change in any building or land in such area and includes agricultural, industrial and socio-economic development of such area,"

Section 14 relates to the application for permission. The same is quoted below:-

"14. Application for permission-(1)]j Every person body(other than any department of Government or any local authority) desiring to obtain the permission referred to in Section 13 shall make an application in writing to the Authority in such form and containing such particulars in respect of the development to which the application relates as may be prescribed.

(2) Every application under sub-section (1) shall be accompanied by such fee as may be prescribed by the regulations.

(3) On the receipt of an application for permission under sub-section (1), the Authority or such person as may be authorized by it in this behalf, after making such inquiry as is considered necessary in relating to any matter specified in clause (d) of sub-section (2) of Section 9 or in relation to any other mater, shall, by order in writing, either grant the

permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission:

Provided that before making an order refusing such permission, the applicant shall be given a reasonable opportunity to show cause:

Provided further that the Authority may, before passing any order on such application give an opportunity to the applicant to make any correction herein or to supply any further particulars or documents or to make good any efficiency in the requisite fee with a view to bringing it in conformity with the relevant rules or regulations.

Sections 25 and 26 of the U.P. Special Area Development Authorities Act, 1986 relate to the demolition as well as stopping the constructions. The same are quoted below:-

> *"25. Order of demolition of building.-(Where any development has been commenced or is being carried on or has been completed in contravention of the master plan or section plan or without the permission, approval or sanction referred to in Section 14 or in contravention of any conditions subject to which such permission, approval or sanction has been granted, then without prejudice to the provisions of Section 24 the Authority may make an order, directing that such development shall be removed by demolition, filing or otherwise by the owner thereof or by the person at whose instance the development has been commenced or is being carried out or has been completed, within such period not being less than fifteen days as may be specified in the order and on his failure to comply with the order, may remove or cause to be removed such development and expenses of such removal shall be recoverable from the owner or the person at whose*

instance the development was commenced or was being carried out or was completed, as arrears of land revenue and no suit shall lie in the Civil Court for recovery of such expenses:

Provided that no such order shall be made unless the owner or the person concerned has been given a reasonable opportunity to show cause why the order should not be made.

(2) The provisions of this section shall be in addition to and not in derogation of any other provision relating to demolition of buildings contained in any other law for the time being in force.

(3) Any person aggrieved by an order passed under sub-section (1) may within thirty days form the date of such order, prefer an appeal to the Commissioner of the division and the decision of the Commissioner in such appeal shall be final.

26. ***Power to stop development.*** *–(1) Where any development has been commenced or continued ion contravention of the master plan or section plan or without the permission, approval or sanction referred to in Section 14 or in contravention of any condition subject to which such permission, approval or sanction has been granted, then, without prejudice to; the provisions of Section 24 and 25, the Authority or such officer as may be authorized by it in this behalf, may make an order requiring the development to be discontinued on and from the date of the service of the*

order, and such order shall be complied with accordingly."

In the present case, notice has been issued for removing the tin-shen and the wall. Admittedly, from the notice it will appear that there is a tin-shed and the construction of the wall is already on the existing joint wall and as such the demolition proceedings in respect of tin-shed as well as the joint wall cannot be said to be covered either under Section 2(c) of the U.P. Special Area Development Authorities Act, 1986word 'building' and under Section 2(d) of the U.P. Special Area Development Authorities Act, 1986, which defines 'development'. Neither any separate wall has been constructed so s to cover under the definition of *building* or *development* nor the tin-shed being a permanent structure so as to come under the definition of the building and as such the impugned orders as well as the notice having been issued in violation of the provisions of Section 25 and 26 of the Act. The same are liable to be quashed.

In view of the aforesaid, I do not find any justification to pass the order of demolition or removal of tin shed or demolition of wall which stands on the joint wall, which is continuing for the last more than twenty years.

A writ of certiorari is issued quashing the orders dated 07.01.1997, 20.03.1997 and 08.08.1997 passed by the respondents no. 3, 2 and 1 respectively along with the notice dated 22.08.1996.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

25.07.2006
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